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Dianne C. Kerns, #011557

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Dianne Crandell Kerns, Chapter 13 Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

JERRY B STAFFORD,

CAROL A STAFFORD,

Debtors.

CHAPTER 13 PROCEEDINGS

Case No. 4:17-bk-13535-BMW

**TRUSTEE'S PLAN
OBJECTION/EVALUATION WITH
NOTICE OF POTENTIAL DISMISSAL
IF CONDITIONS ARE NOT
SATISFIED**

RE: ORIGINAL PLAN (DKT #2)

DIANNE CRANDELL KERNS, Trustee, has analyzed the above-referenced plan and supporting documents on February 13, 2018 and submits the following evaluation and recommendations:

General Requirements:

- a. Due to the possibility of errors on the claims docket, it is the Attorney's responsibility to review all proofs of claim filed with the Court and resolve any discrepancies between the claims and the Plan prior to submitting any proposed Stipulated Order Confirming Plan to Trustee. Trustee will not recommend confirmation, nor stipulate to confirmation, until the proof of claims issues are resolved to Trustee's satisfaction.

- 1 b. Requests by Trustee for documents and information are not superseded by the filing of an
2 amended or modified plan. LRBP Rule 2084-10(b).
- 3 c. Trustee objects to any reduction in the Plan duration or payout in a proposed Stipulated
4 Order Confirming Plan unless an amended or modified plan is filed (using Local Form
2084-4, Chapter 13 Plan) and noticed out.
- 5 d. Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order
6 shall not constitute an informal proof of claim for any creditor."
- 7 e. Trustee requires that any Stipulated Order Confirming Plan state: "Debtor is instructed to
8 remit all payments on or before the stated due date each month. Debtor is advised that when
9 payments are remitted late, additional interest may accrue on secured debts, which may
10 result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured
11 before a discharge can be entered. This requirement is effective regardless of plan payment
12 suspensions, waivers or moratoriums, and must be included in any Stipulated Order
13 Confirming."
- 14 f. At the time of confirmation, Debtor is required to certify, via language in the Stipulated
15 Order confirming, that they are current on all payments that have come due on any Domestic
16 Support Orders since the filing of their case and that they are current on all required tax
17 return filings [pursuant to 11 U.S.C. Sec 1325(a)(8), (9)].
- 18 g. Debtor or Debtor's Attorney is required to provide copies of their federal and state income
19 tax returns for each year for the duration of the Plan to Trustee. Tax returns must be
20 forwarded **within 30 days after the returns have been filed**. All Personally Identifiable
21 Information must be redacted prior to submission. Tax returns may be submitted to
22 mail@dcktrustee.com. This requirement is to be included in the Stipulated Order
23 Confirming the plan. Failure to submit tax returns may result in the dismissal of the Chapter
24 13 case.
- 25 h. If Debtors received a tax refund larger than \$1,000.00 for the tax period preceding the filing
26 of this case, the continuation of such deduction would constitute a diversion of income that
would otherwise be available to creditors. Accordingly Trustee requires that Debtors (i)
adjust payroll tax deductions to prevent over withholding, (ii) amend Schedule I to reflect
the reduced withholding; (ii) submit to Trustee two consecutive paystubs to verify said
reduction; and (iv) increase the plan payments in the Stipulated Order Confirming.
- i. If Debtors are in default (in any amount) on their first mortgage the plan must propose
mortgage conduit payments. If the plan does not propose a mortgage conduit, Trustee
objects to confirmation. This may be resolved by amending the plan or seeking an order
from the court excusing compliance with the conduit requirement. L.R.B.P. Rule 2084-4(b).

Specific Requirements:

- 1 1. Tax Refunds. If Debtor receives a tax refund in excess of \$1,000 during the pendency
2 of this case, said refund must be turned over to Trustee. The proposed stipulated order
3 on confirmation needs to specifically provide that such refund is a SUPPLEMENTAL
4 payment under the plan.
- 5 2. The Order Confirming Plan Must Contain the Following Language Related to
6 Treatment of General Unsecured Claims: “General Unsecured Claims. Such claims
7 shall be paid pro rata the balance of payments under the Plan and any unsecured debt
8 balance remaining unpaid at the end of the Plan may be discharged as provided in 11
9 U.S.C. § 1328(a).”
- 10 3. **Filed Proofs of Claim.** To date Trustee has noted that the following Creditors have
11 **filed proofs of claim that differ from the treatment proposed in the Chapter 13**
12 **Plan. Trustee objects to the treatment of these proofs of claim. This objection may**
13 **be resolved by amending the secured/priority treatment to match the proofs of**
14 **claim in the Stipulated Order Confirming the Plan or by filing an objection**
15 **followed by an order: AZDOR and WELLS FARGO HOME MORTGAGE. This**
16 **objection extends to proofs of claim, if any, filed after the date of this**
17 **evaluation/objection which seek treatment different from that provided for in the**
18 **proposed Chapter 13 Plan.**
- 19 4. **AZDOR Proof of Claim 1.** Trustee objects to confirmation because Creditor has
20 **filed a priority proof of claim in the amount of \$466.36 for Debtor’s 2013 taxes and**
21 **Debtor’s plan proposes to pay \$464.12. This objection may be resolved by**
22 **addressing the proof of claim and the amounts filed by Creditor and have the order**
23 **confirming match the claim.**
- 24 5. **Wells Fargo Home Mortgage Proof of Claim 4.** Trustee objects to confirmation
25 **because the creditor has filed a secured proof of claim in the amount of \$107.74 for**
26 **home arrears on Debtor’s 1st mortgage and Debtor’s plan states that there are no**
 home arrears owed. This objection may be resolved by addressing the proof of
 claim and the amounts filed by creditor and have the order confirming match the
 claim or file an objection to the proof of claim followed by an order.
6. Unfiled Proofs of Claim. To date the following creditors listed in the Plan have not filed
 proofs of claims: **NONE**. Trustee reserves the right to supplement or amend this
 paragraph.
7. Plan Payments. Debtors have made payments in the total amount of \$1,110.00.
 Debtors are current on these payments through March 14, 2018. Trustee will not
 stipulate to confirmation unless the plan payments are current. Plan payment
 information may be obtained by logging on to www.ndc.org. In general, the
 information on this website is 24-hours old.

- 1 **8. Applicable Commitment Period.** Trustee objects to Debtor's applicable
2 commitment period of 36 months as it does not meet the requirements of Section
3 1325(b)(4). This objection may be resolved by amending Debtor's plan to 60
4 months or by providing payment in full of all allowed claims.
- 5 9. Liquidation Analysis: At this time Trustee believes that the plan **does** satisfy the
6 liquidation analysis requirements. Trustee reserves the right to amend this conclusion.
- 7 **10. Projected Disposable Income:** At this time Trustee believes that the plan does not
8 satisfy the projected disposable income requirement of Sec 1325(b). Trustee
9 reserves the right to amend this conclusion.
- 10 **11. Plan Feasibility.** Pursuant to Trustee's calculations, the Chapter 13 Plan is not
11 feasible at this time because it does not comply with 11 U.S.C. §1325(b)(1)(B).
12 According to Debtor's Form I22C, the disposable income of \$144.01, multiplied by
13 60 months, results in a dividend to unsecured creditors of \$8,640.60. Pursuant to
14 Trustee's calculations, the dividend to unsecured creditors is \$8,614.66. However,
15 Trustee reserves the right to file an amended evaluation requiring adjustments to
16 the terms of the plan, including an increase in plan funding if necessary, in order
17 to address all timely filed proofs of claim once the claims bar date has passed in
18 this case.
- 19 12. Objections to Confirmation. Debtors shall resolve plan objections by submitting a
20 proposed SOC to Trustee or by setting a hearing on the objection within 30 days of this
21 objection/evaluation. If Debtors wish to confirm by stipulation, the stipulation of the
22 objecting creditor must be obtained in writing prior to submitting a proposed SOC to
23 Trustee. If the resolution of the objection requires changes which have an adverse
24 impact on any other creditor under the plan (including a reduction in the amount to any
25 creditor and/or a delay in payment), the changes must be noticed to creditors and an
26 opportunity for objection provided. To date Trustee has noted that the following
 creditors have filed objections to the Chapter 13 Plan: **NONE.**
13. Submission of Proposed SOC. If Debtors propose to confirm the plan through a
 stipulated order on confirmation, a Notice of Submitting Proposed SOC should be filed
 with the Court, including a complete copy of the Proposed SOC as an exhibit. The
 Notice, SOC, and filing receipt may then be transmitted to Trustee via electronic mail
 (mail@dcktrustee.com) or first class mail. Trustee will not review a proposed SOC if
 it does not appear on the court's docket.¹ Trustee considers the time for reviewing a
 proposed Order pursuant to LRBP Rule 2084-13(e), to begin running when all
 Recommendation conditions are met.

¹ The alternative to stipulated confirmation is setting a contested confirmation hearing before the judge.

1 RESPECTFULLY SUBMITTED this 15th day of February, 2018.

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3 OFFICE OF THE CHAPTER 13 TRUSTEE
4 7320 N. La Cholla #154-413
5 Tucson, AZ 85741

6 By /s/ DCK #011557
Dianne C. Kerns, Chapter 13 Trustee

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8 A copy of the foregoing was filed with the
9 court and a copy, together with a receipt of filing,
10 was transmitted via electronic or first class
11 mail this 2/15/2018 to:

12 JERRY B STAFFORD
13 CAROL A STAFFORD
14 43138 W HILLMAN DR
15 MARICOPA, AZ 85138
16 Debtors

17 DAVID W REICHEL
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19 300 W CLARENDON AVE
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23 Attorney for Debtors

24 By: NC
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